It is quite clear that the above definition of a goods vehicle is certainly not in pari materia with the definition in s 2 of the Singapore Road Traffic Ordinance. In our view the tractor comes within definition (b) above as it is a motor vehicle which was being used for the carriage of goods.

It is pertinent also to examine the contents of the carrier's licences issued in respect of the tractor and the trailer both dated 25 September 1979 and numbered CL 2799. In the licence for the tractor No AP 8623 the second respondent is authorized to use the tractor for the carriage of their goods with the restriction that it shall be used only to draw trailer No T/A 1448.

The carrier's licence issued in respect of the trailer No T/A 1448 sets out the maximum permissible laden weight at 360 cwts combined and restricts its use to the carriage of goods only when it is drawn by the tractor No A/P 8623.

The contents of these two licences must be read together. It must be stressed here that the tractor was licensed as a carrier solely for the purpose of drawing the trailer. And the trailer was licensed only to be drawn by the tractor. The maximum permissible laden weight of 360 cwts must be taken as the weight of the whole unit, ie the tractor and the trailer, as the condition in the carrier's licence of the trailer specifically refers to 360 cwts as the combined weight. We are of the view that the learned judge did not give adequate consideration to the contents of the two licences. He did mention the 360 cwts as the combined weight of the trailer's licence but thought little of it. Clearly, reading these two licences together we are of the view that the maximum permissible laden weight of the tractor and the trailer was not to exceed 360 cwts and they were quite rightly weighed together.

In the event therefore we answer all the four questions in the affirmative and acting under s 66(4) of the Courts of Judicature Act we uphold the convictions and fines imposed on the respondents by the learned magistrate.

Order accordingly.

Solicitors: *Gurbachan Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Mohd Osman bin Pawan v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 47 OF 1986
LEE HUN HOE CJ (BORNEO), MOHAMED YUSOFF AND AJAIB SINGH SCJJ
4 AND 6 JANUARY AND 17 MARCH 1989

Criminal Law – Dangerous drugs – Charge of trafficking – Identity of exhibits – Failure to adduce evidence to provide necessary link in chain of evidence – Conviction for trafficking set aside – Admission by accused – Conviction of possession of dangerous drugs – Dangerous Drugs Act 1952, ss 2, 6, 7 & 39B

Criminal Procedure – Failure to call evidence to provide necessary link in prosecution's case – Identity of exhibits – Gap in prosecution's case – Dangerous Drugs Act 1952, s 39(B)

In this case a team of customs officers acting on information received entered the flat occupied by the appellant on 17 March 1983. The customs officers seized a yellow plastic bag which they had seen the appellant carry into the flat and also a canvas bag locked with a small padlock. The appellant was taken to the customs department with the exhibits. The appellant was asked to open the package wrapped in newspaper in the plastic bag. When it was opened it was found to have six bundles of 50 rolls each containing what was later ascertained to be cannabis. A customs officer forced open the canvas bag and it was found to contain three big packages and one small package. The exhibits were handed over to a Superintendent of Customs who kept all the exhibits in the department's strong-room. According to him he received altogether 300 rolls of cannabis in the plastic bag and 4,000 rolls in the canvas bag. On 19 March the Superintendent of Customs labelled all the exhibits and on 21 March 1983 he packed and sealed them and sent them to the chemist. On 30 May 1983 he collected them back from the chemist with the chemist's report. The chemist in his evidence said that he received four packages containing 3,997 rolls of plant material which, upon analysis, he found to be cannabis. He also examined a yellow plastic bag with a newspaper package containing 299 rolls, which on analysis he also found to be cannabis.

The appellant was subsequently charged and convicted of the offence of trafficking in dangerous drugs. He appealed and the main ground of appeal was that the prosecution had failed to establish a continuous chain of evidence relating to the exhibits, the subject matter of the charge. It was submitted (a) that with the four missing rolls not received by the chemist possibly different exhibits were sent to him; (b) the evidence showed the shoddy manner the exhibits were kept in the customs strong-room. They were not labelled until two days later and it took another two days before they were packed and sealed. The evidence also showed that the exhibits were kept in the strong-room with other exhibits and no register was kept of what other exhibits were kept there. The customs officer who counted the exhibits in the presence of the appellant was not called to give evidence but instead the prosecution made him available to the defence.

Held, allowing the appeal:

(1) In a serious case such as this it is pertinent to emphasize again that investigation officers should not treat the custody of exhibits lightly so as to leave a gap in the chain of evidence relating to the exhibits before their production in court.

(2) In this case the prosecution did not call the customs officer who counted the exhibits in the presence of the appellant to give evidence but instead made him available to the defence. But when the prosecution evidence falls short of a prima facie case at the end of the case for the prosecution, such an action is of no avail to close the gap arising in the prosecution's case.

(3) The law is clear that it is unnecessary to call every witness to ensure that there is no break in the chain of evidence. But when there is doubt as to the identity of the exhibits, as in this case, failure to adduce evidence to provide the necessary link in the chain of evidence would be fatal to the prosecution's case. In the present case there is such a failure and therefore the conviction under s 39B(1)(a) of the Dangerous Drugs Act 1952 cannot stand.

(4) The evidence showed that the appellant had admitted unreservedly that he bought the cannabis found with him in the yellow plastic bag. The contents of this plastic bag were examined and analysed by the chemist and he ascertained they were cannabis weighing 127.41 gm. On these facts the appellant had committed the offence of possession of the drug contrary to s 6 of the Dangerous Drugs Act 1952 and his conviction is substituted to one under s 6 of the Act. He was sentenced to five years' imprisonment from the date of his conviction in the High Court.

Cases referred to

1 *Abdullah Zawawi* v *PP* [1985] 2 MLJ 16 (refd)
2 *Su Ah Ping* v *PP* [1980] 1 MLJ 75 (refd)
3 *Teoh Hoe Chye* v *PP* [1987] 1 MLJ 220 (refd)

Legislation referred to

Dangerous Drugs Act 1952, ss 2, 6, 7, 39B

Mohd Shafee Abdullah for the appellant.
Abdul Hamid Embong (Senior Federal Counsel) for the respondent.

Cur Ad Vult

Mohamed Yusoff SCJ (delivering the judgment of the court): The appellant, Mohd Osman bin Pawan, was tried by the Kuala Lumpur High Court on the following charge:

> That you on 17th day of March 1983 at about 12.35 pm at No 16B, Jalan Kovil Hilir, off Jalan Ipoh, Kuala Lumpur in Wilayah Persekutuan, did on your own behalf traffic in dangerous drugs, to wit 1,906.15 gm of cannabis and that you have thereby committed an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under s 39B(2) of the same Act.

He was found guilty, convicted and sentenced to death. He now appeals against both conviction and sentence.

The facts are these. On 16 and 17 March 1983 a team of customs officers, acting on information received, kept surveillance on premises No 16B Jalan Kovil Hilir, off Jalan Ipoh, Kuala Lumpur. It was a flat on the second floor of a four-storey building. The flat was leased out by rooms and the appellant occupied one of them. One customs officer (PW2) occupied another room.

On 17 March 1983 at 12.354 pm the appellant was seen entering the flat and went straight to his room which was previously kept locked. He carried a yellow plastic bag, exh P6, with him, which he later placed on a chair in the hall of the flat.

As the appellant came out from his room and locked it, Senior Superintendent of Customs Lam Ahmad bin Hassan (PW3) and his men entered the flat. After a short conversation the appellant brought them to his room where PW3 recovered a canvas bag, exh P3, among children's clothings in a box, exh P2. The bag was locked with a small padlock. The appellant had no key to it. The appellant was then taken to the Customs Department with exhs P3 and P6.

At 1.40 pm the same day, in the office of PW3, the appellant was asked to open the package wrapped in newspaper in exh P6. When it was opened, it was found to contain what was later ascertained to be cannabis. It was counted by a customs officer, PK738, in the presence of the appellant, and found to have six bundles of 50 rolls each.

The locked canvas bag, exh P3, was forced opened by a customs officer, also in the appellant's presence. It was found to contain three big packages and one small one. On being counted by the same customs officer, the big packages contained five smaller packets, and each packet was found to contain ten bundles. They were also ascertained to be cannabis.

At 5.45 pm the same day, 17 March 1983, PW3 handed the appellant and all the exhibits to Superintendent of Customs Zainal Abidin bin Taib (PW7), who kept all the exhibits in the department's strong-room. He handed the appellant to police custody. According to PW7, he received altogether 300 rolls of cannabis in exh P6 and 4,000 rolls in exh P2.

On 19 March 1983, PW7 labelled all the exhibits and on 21 March 1983 he packed and sealed them and sent them to the chemist. On 30 May 1983, PW7 collected them back from the chemist with the chemist's report.

The chemist (PW1) in evidence said that he received four packages marked A3 to A6 containing 3,997 rolls of plant material, which, upon analysis, was found to be cannabis. He also examined a yellow plastic bag with a newspaper package marked B1 containing 299 rolls, which, on analysis, was also found to be cannabis.

The main ground of appeal was that the prosecution had failed to establish a continuous chain of evidence relating to the exhibits, the subject matter of the charge, and in that event the learned judge has erred in law in calling for the defence of the appellant. Counsel for the appellant, though not disputing that the exhibits were cannabis, argued that both prosecution witnesses, PW3 and PW7, were quite emphatic that they found 300 rolls in exh P6 and 4,000 rolls in exh P3 on 17 March 1983,

but when they reached the chemist on 21 March 1983 the packages were found to contain 299 rolls and 3,997 rolls of cannabis respectively. With the four missing rolls received by the chemist, it was argued that possibly different exhibits were sent to him. It was also submitted that the evidence shows the shoddy manner the exhibits were kept in the customs strong-room. They were not labelled until two days later and it took another two days before they were packed and sealed on 21 March. For these reasons it was argued that the exhibits recovered were not necessarily the same drugs that were sent to the chemist.

We feel that the point was correctly taken by the appellant. In a serious case, such as this, it is pertinent to emphasize again that investigation officers should not treat the custody of exhibits lightly so as to leave a gap in the chain of evidence relating to the exhibits before their production to the court.

In the present case, it is noted, as shown in evidence, that the relevant exhibits, exhs P3 and P6, were kept in a common strong-room with other exhibits relating to other cases. They were not labelled nor marked. No register was kept of what other exhibits were kept in the room together with the present exhibits. The possibility of sending different exhibits to the chemist for analysis was highly probable in a situation such as this. This is more so when there is a discrepancy discovered in the amount of the drug, as the exhibits in this case, received by the chemist was less than the amount allegedly sent to him for analysis.

It is observed in the present case that the customs officer, PK738, who counted the exhibits in the presence of the appellant, was not called to give evidence but instead the prosecution made him available to the defence. But when the prosecution evidence falls short of a prima facie case at the end of the case for the prosecution, such an action is of no avail to close the gap arising in the prosecution's case (see *Abdullah Zawawi* v *PP*[1]).

It is also observed that the law is clear that it is unnecessary to call every witness to ensure that there is no break in the chain of evidence (see *Su Ah Ping* v *PP*[2]). But when there is doubt as to the identity of the exhibits, as in this case, failure to adduce evidence to provide the necessary link in the chain of evidence would be fatal to the prosecution's case (*Teoh Hoe Chye* v *PP*[3]). In the present case we find that there is such a failure and as such the conviction under s 39B(1)(a) cannot stand. We set aside the conviction and sentence. To that extent the appeal is allowed.

Nevertheless the evidence shows that the appellant had admitted unreservedly that he bought the cannabis found with him in the yellow plastic bag from one Nasaruddin. He said he paid for 300 sticks but was given only 299 of them. They were mainly, he said, for his own consumption. The contents of this yellow plastic bag was examined and analysed by the chemist and he ascertained that they were cannabis weighing 127.41 gm.

Cannabis is defined as a dangerous drug under s 2 and the First Schedule of the Dangerous Drugs Act 1952. Possession of this drug of less than 200 gm in weight (presumed weight for trafficking) without authorization under s 7 is contrary to and punishable under s 6 of the Act.

In our view, on those facts, the appellant had committed an offence contrary to s 6 and in that event his conviction is substituted to one under s 6 of the Act. Punishment prescribed under s 6 of the Act is $10,000 fine or imprisonment not exceeding five years or both. Because of the seriousness of the nature of the offence of possession of drugs in the country, we feel that a custodial sentence is imperative in public interest.

Cognizant of that situation the sentence meted out on the appellant is now substituted to one of five years' imprisonment. This sentence is to run from the date of his conviction in the court below, 30 July 1986.

Appeal allowed. Conviction and sentence substituted accordingly.

Appeal allowed.

Solicitors: *Shafee & Co.*

Reported by *Prof Ahmad Ibrahim*

Public Bank Bhd v Malamaju Enterprise Sdn Bhd & Ors

HIGH COURT (IPOH) – CIVIL SUIT NO 1504 OF 1985
ABDUL MALEK J
11 FEBRUARY 1989

Civil Procedure – Service of writ of summons – Application to set aside – Substituted service of writ of summons effected on premises after defendant has moved out – Change of address card issued by Registration Department produced – Subsequent judgment in default of appearance obtained – Irregular judgment due to non-service of writ

Civil Procedure – Final judgment given by senior assistant registrar – Appeal against – Whether triable issues on the merits raised – Sixteen-month delay on plaintiffs' part in filing application for final judgment – No explanation given – Whether final judgment should be set aside

In this case the fifth defendant had applied to set aside the service of the writ of summons and the judgment in default of appearance entered against her by the plaintiffs. At the same hearing, the fourth and sixth defendants had also filed a notice